

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

EBAY, INC., ) Case No. CV 08-04052 JF PVT  
Plaintiff, )  
v. )  
DIGITAL POINT SOLUTIONS, INC., SHAWN )  
HOGAN, KESSLER'S FLYING CIRCUS, )  
THUNDERWOOD HOLDINGS, INC., TODD )  
DUNNING, DUNNING ENTERPRISE, INC., )  
BRIAN DUNNING, BRIANDUNNING.COM, )  
and Does 1-20, )  
Defendants. )  
)  
)

The motion of Defendants DIGITAL POINT SOLUTIONS, INC. and SHAWN HOGAN for dismissal of Plaintiff EBAY, INC.'s Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) came on regularly for hearing before this Court on June 26, 2009. The parties were represented by their respective counsel of record.

After considering the moving and opposition papers, arguments of counsel and all other matters presented to the Court, IT IS HEREBY ORDERED THAT Defendants DIGITAL POINT SOLUTIONS,

1 INC. and SHAWN HOGAN's motion to dismiss for failure to state a claim is GRANTED and Plaintiff's  
2 Second Amended Complaint is hereby dismissed without leave to amend.

3 DATED: \_\_\_\_\_, 2009

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5 HON. JEREMY FOGEL  
United States District Judge

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